IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1515 of 2007()

CC.30/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER:

DR.K. SAJAN, INTER NATIONAL RELATIONS
AND ACADEMIC ADMISSIONS (IRAA) DIRECTOR,
ADMINISTRATION OFFICE, COCHIN UNIVERSITY OF
SCIENCE AND TECHNOLOGY, COCHIN-22.

BY ADV. SRI.ANIMON A. JOHN

RESPONDENTS:

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1. K.M. ABOOBACKER, KALLEPPURAM HOUSE,
CHANGAMPUZHA NAGAR, KUMMANCHERY PIPE LINE ROAD,
KALAMASSERY.

2. STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, KALAMASSERY,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1515 of 2007

Dated this the 29th day of May 2007

O R D E R

The petitioner has come to this court aggrieved by the cognizance taken against him of the offences punishable interalia under Section 323 I.P.C on the basis of Annexure A3 complaint filed by the first respondent herein.

2. There was an alleged incident which took place on 01/09/2006 in which the petitioner and the first respondent were involved. The petitioner filed a complaint on the basis of which an F.I.R has been registered and investigation is in progress. The first respondent, long later, filed a private complaint on the basis of which cognizance has now been taken by the learned Magistrate. The learned counsel for the petitioner contends that the cognizance taken against him on the basis of the private complaint filed by the first respondent is not proper or justified . That complaint filed long after the incident, is only a counter blast against the petitioner for having filed the complaint before the police and the investigation which had by then commenced. The private complaint is dated 20/09/2006. The alleged incident was taken place as early as on 01/09/2006. The counsel further submits that the first respondent appears to have

come to know of the registration of the crime against him by the police and the averments in the complaint Annexure A3 do also indicate that the first respondent did know about the registration of the F.I.R. For these four reasons - that no prompt complaint was filed; that the complaint was filed only after twenty days; that the complaint was filed after coming to know that the F.I.R was registered at the instance of the petitioner and that the present complaint was filed after having occasion to peruse the F.I.R registered at the instance of the petitioner, the cognizance taken on the basis of Annexure A3 complaint deserves to be quashed, submits the learned counsel for the petitioner. The learned counsel for the petitioner further submits that the learned Magistrate has not conducted proper enquiry under Section 202 Cr.P.C also before taking cognizance.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. The acceptability of the allegations and the credibility of the data cannot be gone into minutely in proceedings under Section 482 Cr.P.C. The copy of the complaint clearly indicates that the first respondent had suffered injuries and produced copy of the wound certificate and the medical certificate before the court. At any rate, I am, in these circumstances, of the opinion that the learned Magistrate

cannot be found fault with for not rejecting the complaint at the threshold. In these circumstances, I am of the opinion that the prayer for quashing of the complaint cannot be accepted.

4. The learned counsel for the petitioner submits that great prejudice, hardship and inconvenience would result if insistence were made on the personal appearance of the petitioner on all dates of posting. The offences alleged are only summons offences, it is submitted.

5. It is for the petitioner to appear before the learned Magistrate and apply for exemption from personal appearance. He can pray for opportunity to appear through counsel. I find no reason why the learned Magistrate should not grant such a request. The petitioner can apply for exemption and the learned Magistrate must permit him to be represented by counsel unless sufficient and satisfactory reasons are there to justify insistence on his personal presence. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007